S.B. Civil Misc. Appeal No.1701/2006

Gheesu Singh.
vs.
Jagroop Singh.

Date : 16.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Saruparia, for the appellant.

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Heard learned counsel for the appellant.

The appellant/defendant has filed this appeal against the order dated 28.9.2006. The appellant is the defendant in the main suit before the trial court. In the trial court, the plaintiff/respondent submitted application under Order 39 Rules 1 and 2 CPC wherein the trial court granted ad-interim injunction directing the appellant/defendant not to alienate the property in dispute.

According to learned counsel for the appellant, the appellant is in possession of the suit property and, therefore, he is seeking order against the respondent/ plaintiff that he should not interfere in the peaceful possession of the appellant.

It appears that the appellant did not submit any application for grant of injunction nor there was any prayer before the trial court that he is entitled to any relief in the form of injunction against the plaintiff. The

appellant is praying the injunction order against the person in whose favour there was an injunction order already granted by the trial court and this injunction is sought from the appellate court instead of moving an application before the trial court for grant of injunction as the defendant can also file application under Order 39 Rules 1 and 2 CPC for appropriate relief.

Since the relief can be granted by the trial court after hearing the parties and the facts are disputed questions of fact, therefore, this type of plea cannot be raised in appeal by the defendant without making out a case for grant of injunction before the trial court and obtaining order on facts and according to law from the court below.

In view of the above, this appeal for such a prayer is not maintainable and the appellant is free to take appropriate legal steps, may it be by filing application before the court below for grant of relief which can be decided by the court below after hearing the other party in accordance with law only.

In view of the above, though the appeal was admitted by the order of Registrar (Administration) of this Court, the appeal is dismissed as not maintainable for the prayer sought.

(PRAKASH TATIA), J.

S.Phophaliya